

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

FILED  
U.S. DISTRICT COURT  
2017 NOV -6 9 56  
DISTRICT OF UTAH

In re:

JESSICA A. JONES,

Debtor.

\_\_\_\_\_ /

KAREN E. EVANGELISTA, TRUSTEE,

Plaintiff,

vs.

UNIVERSITY OF PHOENIX, *et al.*,

Defendants.

\_\_\_\_\_ /

BY: \_\_\_\_\_  
Case: 2:17-mc-01184 DEPUTY CLERK  
Assigned To : Parrish, Jill N.  
Assign. Date : 11/6/2017  
Description: Evangelista v. University  
of Phoenix et al

**MOTION AND MEMORANDUM TO COMPEL TCN, INC. TO RESPOND TO  
SUBPOENA DUCES TECUM AND FOR ORDER TO SHOW CAUSE WHY TCN, INC.  
SHOULD NOT BE HELD IN CONTEMPT FOR FAILING TO PRODUCE  
DOCUMENTS**

Pursuant to Fed. R. Civ. P. 45(g), Plaintiff Karen E. Evangelista, the Chapter 7 Trustee, by and through her attorney, respectfully moves this Court for entry of an order compelling non-party TCN, Inc. to produce documents responsive to subpoenas duces tecum served on them on September 26, 2017 and to show cause why TCN, Inc. should not be held in contempt for their failure to produce documents. A proposed order is submitted herewith.

**Introduction:**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure (FRCP), Plaintiff Karen E. Evangelista (Trustee) served a subpoena on TCN, Inc., a non-party headquartered in Utah, to

obtain evidence in support of her Telephone Consumer Protection Act, 47 USC 227 et seq. (TCPA), Fair Debt Collection Practices Act, 15 USC 1692 et seq. (FDCPA) and Unfair and Deceptive Acts and Practices (UDAP) claims currently pending in the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division, Adv. Pro. No. 17-4633. To date, TCN, Inc. has failed to comply with Plaintiff Trustee's subpoena.

**Background:**

According to Bloomberg.com, TCN, Inc. provides cloud-based call center technology solutions for enterprises, contact centers, BPOs, and collection agencies worldwide. It offers Platform 3.0, a hosted contact center suite that provides access to call center technology, such as inbound, outbound, blended, predictive dialer, call recording, manual dial, caller DID, agent transfer, agent dashboard, agent triggers, manager barge in, cell phone scrub, and business analytics solution required to optimize operations. TCN, Inc. also offers additional products, which include interactive voice response, interactive voice messaging, ACD, call distribution, call recording storage, workforce optimization, auto dialer, etc.

Defendant Optio Solutions, LLC d/b/a Qualia Collection Services (Optio) used the services of TCN, Inc. to place collection calls to Bankruptcy Debtor Jessica Jones. Plaintiff Trustee seeks evidence in support of her claims against Defendant Optio Solutions, which TCN, Inc. possesses.

**Legal Standards**

The motion before the court relates to the discovery process. "The district court has broad discretion over the control of discovery, and [the Tenth Circuit] will not set aside discovery rulings absent an abuse of that discretion." *Sec. & Exch. Comm'n v. Merrill Scott & Assocs., Ltd.*, 600 F.3d 1262, 1271 (10th Cir. 2010) (quotations and citations omitted).

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, a non-party witness may be compelled by the issuance of a subpoena to produce documents or appear and testify at a deposition. *See* Fed. R. Civ. P. 45(a)(1)(A)(iii). "At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection." [\*6] Fed. R. Civ. P. 45(d)(2)(B)(i). In addition, Rule 45(g) allows the court to "hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it." Fed. R. Civ. P. 45(g).

A non-party may object to the subpoena by filing a motion to quash or to modify. *See* Fed. R. Civ. P. 45(d)(3).

### **Arguments**

Here, TCN, Inc. was served with the proper subpoena duces tecum on September 26, 2017.<sup>1</sup> TCN, Inc. produced a **single, one page** response to the subpoena despite the fact that TCN, Inc. supplied Defendant Optio with its calling systems to make robo calls to Debtor Jones.<sup>2</sup> TCN, Inc. has all of the requested items such as manuals, instruction guides for its telephone systems both Manual Dial and TCN Predictive Dialer used by Defendant Optio, policies and procedures in place for TCPA, FDCPA and UDAP compliance.

The TCPA and UDAP claims require Plaintiff Trustee to show to the court the type of calling systems used to call Debtor Jones and how such systems were in violation of the statutes. Therefore, Plaintiff Trustee needs all the required documents outlined in the Subpoena Duces Tecum to prove her claims against the Defendants.

There is no protective order entered in this Adv. Pro. No. 17-4633. Furthermore, TCN, Inc. has not filed a motion to quash or modify the subpoena.

### **Conclusion:**

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<sup>1</sup> *See* Subpoena Duces Tecum, attached hereto as **Exhibit 1**.

<sup>2</sup> *See* TCN, Inc. single one page response attached hereto as **Exhibit 2**.

For the foregoing reasons, the Court should issue an order compelling TCN, Inc. to respond fully to the subpoena duces tecum and issue an order to show cause why non-party TCN, Inc. should not be held in contempt of court and be required to reimburse the Trustee for legal expense and costs associated with the filing of the present motion.

Respectfully submitted,

Dated: November 6, 2017

/s/ Stephen A. Thomas  
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#### CERTIFICATE OF SERVICE

I, Stephen A. Thomas, hereby state that on November 6, 2017, the foregoing document was filed using the court's CM/ECF System, and I served by U.S. First Class Mail upon the following interested parties:

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